

Special Civil Application No 4664 of 1986
with
Special Civil Application No. 4665 of 1986
with
Special Civil Application No. 4666 of 1986

Date of decision: 13/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

FULABHAI NARANBHAI AMIN & ORS .

MAMTABEN FULABHAI AMIN

MINAKSHIBEN FULABHAI AMIN

vs

THE COMPETENT AUTHORITY & DY. COLLECTOR, BARODA & ANR.

Appearance:

Shri P.B. Majmudar, Advocate, for the Petitioners (in all matters)

Shri D.N. Patel, Asst. Govt. Pleader, for the Respondents (in all matters)

Coram : MR.JUSTICE A.N.DIVECHA

ORAL JUDGEMENT

The common order passed by the Competent Authority at Baroda (respondent No. 1 herein) on 24th September 1984 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the common appellate order passed by the Urban Land Tribunal at Ahmedabad

(the Appellate Authority for convenience) on 20th March 1986 in Appeals Nos. Baroda-1588, 1589 and 1590 of 1984 is under challenge in these three petitions under articles 226 and 227 of the Constitution of India. By his impugned order, respondent No. 1 declared the holding of the petitioners of Special Civil Application No.. 4664 of 1986 (the first petition for convenience) to be in excess of the ceiling limit by 26266 square meters and that of the petitioner of Special Civil Application No. 4665 of 1986 (the second petition for convenience) by 34731 square meters and that of the petitioner in Special Civil Application No. 4666 of 1986 (the third petition for convenience) by 31664 square meters.

2. Since the very same order passed by respondent No. 1 in each petition as affirmed in appeal by the common appellate order passed by the appellate authority is under challenge in all these three petitions and since the subject-matter of all these three petitions is practically common and since the petitioners of the second and the third petitions are daughters of petitioner No. 1 of the first petition, I have thought it fit to dispose of all these three petitions by this common judgment of mine.

3. The facts giving rise to these petitions move in a narrow compass. Petitioner No. 1 of the first petition and the petitioners of the second and the third petitions filed their separate declarations in the prescribed form under sec. 6(1) of the Act. Since the subject-matter of the three declarations was practically common, respondent No. 1 in each petition processed all the forms together. After observing necessary formalities according to law, by his common order passed on 26th September 1984 under sec. 8(4) of the Act, respondent No. 1 declared the holding of each declarant to be in excess of the ceiling limit as pointed out hereinabove. Its copy is at Annexure D to each petition. That aggrieved each declarant. All of them separately carried the matter in appeal before the appellate authority under sec. 33 of the Act. By the common appellate order passed by the appellate authority in all the aforesaid three appeals, all of them came to be dismissed. A copy of the aforesaid common appellate order is at Annexure E to each petition. The aggrieved petitioners have thereupon separately filed these three petitions under article 227 of the Constitution of India for questioning the correctness of the order at Annexure D to each petition as affirmed in appeal by the common appellate order at Annexure E to each petition.

4. It has been urged on behalf of the petitioners that the lands involved in all these petitions were used for agricultural purposes on the date of coming into force of the Act and they were not shown in any zone other than the agricultural zone in any master plan answering its definition contained in sec. 2(h)

of the Act at the relevant time. In that view of the matter, runs the submission of learned Advocate Shri Majmudar for the petitioner in each petition, all these lands ought to have been excluded from each declarant's holding in view of the binding ruling of the Supreme Court in the case of Smt. Atia Mohammadi Begum v. State of U.P. and others reported in AIR 1993 Supreme Court 2465. It has also been urged on behalf of the petitioners in all these petitions that their holding included one house property in existence prior to coming into force of the Act. It ought to have been excluded from their holding in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 Supreme Court 1567. As against this, learned Assistant Government Pleader Shri Patel for the respondents has urged that respondent No.1 decided the case in view of the law prevalent at that time and the matter should be remanded to respondent No. 1 for restoration of the proceeding to file and for his fresh decision according to law in the light of the aforesaid binding rulings of the Supreme Court if the declaration of the excess land is found contrary to the aforesaid two binding rulings of the Supreme Court.

5. It cannot be gainsaid that the binding law declared by the Apex Court will have retrospective operation unless its operation is made prospective on the theory of declaration of law by the court. In that view of the matter, the aforesaid binding rulings of the Supreme Court can be said to have interpreted the law as is found contained in the Act as it was brought into force. The case of the petitioners of all these three petitions will have therefore to be decided in the light of the aforesaid binding rulings of the Supreme Court.

6. In all these three petitions a copy of the declaration in the prescribed form has been brought on record by way of amendment. It transpires therefrom that practically all the lands are shown to be used for agricultural purposes. In that context it would be necessary to ascertain whether or not any master plan answering its definition contained in sec. 2(h) of the Act was in existence on the date of coming into force of the Act as situation of the lands therein at the relevant time. It will also be necessary to ascertain whether or not agricultural operations were in fact carried on therein at the relevant time. Answer to all these questions will decide the applicability or otherwise of the aforesaid binding ruling of the Supreme Court in the case of Smt. Atia Mohammadi Begum (supra)

7. Similarly, the declaration made by the petitioners of the first petition mentions one house property which would certainly be in existence prior to coming into force of the Act as it has figured in the declaration. If its construction was authorised, it would have to be excluded from the holding of the

declarant in view of the aforesaid binding ruling of the Supreme Court in the case of Smt. Meera Gupta (supra).

8. In view of my aforesaid discussion, I am of the view that the matter will have to be remanded to respondent No. 1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. The impugned orders at Annexures D and E to each petition will have therefore to be quashed and set aside for the purpose.

9. In the result, all these three petitions are accepted. The common order passed by the Competent Authority at Baroda (respondent No. 1 herein) on 26th September 1984 under sec. 8(4) of the Act at Annexure D to each petition as affirmed in appeal by the common appellate order passed by the Urban Land Tribunal at Ahmedabad on 20th March 1986 at Annexure E to each petition is quashed and set aside. The matters are remanded to respondent No. 1 for restoration of the proceedings to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent in each petition with no order as to costs.
